



IT IS ORDERED as set forth below:

Date: June 29, 2011

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 11-51640-PWB
	:	
SHARON B. THOMPSON,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
_____	:	
	:	
EWAN D. GAYLE,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 11-5202
SHARON B. THOMPSON,	:	
	:	
Defendant.	:	

**ORDER DENYING REQUESTS FOR ENTRY OF DEFAULT AND DEFAULT
JUDGMENT**

The Plaintiff seeks entry of default and default judgment against the Defendant on his complaint to determine dischargeability of his debt pursuant to 11 U.S.C. § 523(a)(4). On June 6,

2011, the Defendant filed a late answer to the complaint. The certificate attached to the answer shows service of the pleading on the Plaintiff on June 3, 2011. Based on a review of the documents filed by the parties it is entirely likely that the Plaintiff had prepared his request for entry of default and placed it in the mail prior to or contemporaneous with the filing and service of an answer by the Defendant. Nevertheless, the Debtor's answer was filed two days prior to the Plaintiff's request for entry of default.

Rule 55(a) of the Federal Rules of Civil Procedure, made applicable by Rule 7055 of the Federal Rules of Bankruptcy Procedure provides, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." As a result, even if a party answers late, if the party files an answer prior to the request for entry of default, the clerk may not enter default.

Even if the Plaintiff were to move to strike the answer on the ground that it was not timely filed, the Court, in its discretion, would not be inclined to grant such relief. As a matter of public policy, "defaults are not favored in federal court and trials on the merits are the preferred method for resolving disputes." *Ritts v. Dealers Alliance Credit Corp.*, 989 F.Supp. 1475, 1480 (N.D. Ga. 1997). The Defendant's answer was filed approximately 21 days late and there does not appear to be a significant prejudice to any party based on this late filing. Accordingly, it is

ORDERED that the Plaintiff's requests for entry of default and default judgment (Doc. 5, 6) are denied.

End of Order

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